



U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC USE

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

U.S. B, 3rd Floor

Washington, D.C. 20536

BSA

FILE: [REDACTED]
EAC 00 143 53123

Office: Vermont Service Center

Date: AUG 21 2001

IN RE: Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he is a person of good moral character, and that he failed to submit additional evidence as had been requested. The director, therefore, denied the petition.

On appeal, the petitioner asserts that he believes the Service had placed too much burden beyond reasonableness, fairness, and without any evidence of criminal wrongdoing.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner last entered the United States with a fraudulent U.S. passport on January 5, 1994. The record further reflects that the petitioner married his United States citizen spouse on [REDACTED]. On April 5, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that although the petitioner responded to his request for additional evidence, he failed to include a police clearance as required to establish good moral character. The director also noted that the Service records indicate that the petitioner attempted entry into the United States by using someone else's United States passport, and that section 101(f) of the Act, 8 U.S.C. 1101, provides that a person cannot be found to be of good moral character if he or she has given false testimony for the purpose of obtaining immigration benefits. He, therefore, determined that by presenting a United States passport to immigration officials, the petitioner in effect gave false testimony regarding his status. The director further noted that the record contains documentary evidence that establishes the petitioner was in arrears for child support and, therefore, the petitioner may be found to lack good moral character if he has willfully failed to support his dependents.

On appeal, the petitioner asserts that his attempted entry with someone else's passport was justified by the immigration judge who found in favor of his application without fraud charges, and that he was exonerated of the charge by the judge. The petitioner further asserts that he had been paying child support and that currently, there are no arrears. He states that at no time had he intentionally failed to provide child support for his children, and that the only reason he works and invests in the United States is to provide for his children and for himself.

8 C.F.R. 204.2(c)(1)(vii) states, in part, that:

A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act.... A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. 1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be establish, is, or was--

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act....

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

The director determined that the petitioner has failed to establish good moral character pursuant to section 101(f) of the Act for having given false testimony regarding his status in the United States when he presented a United States passport to immigration officials.

A review of the record of proceeding reflects that on January 5, 1994, the petitioner arrived at the Miami International Airport and presented to an immigration officer a U.S. passport belonging to another person. The petitioner was detained for a hearing before an immigration judge after being found inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act (for willfully misrepresenting a material fact in order to gain entry into the United States) and section 212(a)(7)(A)(i)(I) of the Act (as an immigrant not in possession of a valid unexpired immigrant visa).

In exclusion proceedings on November 15, 1994, the immigration judge considered the inadmissibility of the applicant under section 212(a)(6)(C)(i) of the Act and states:

It was established that the applicant did present a United States passport at the time that he arrived in Miami, Florida. However, it was also established that the applicant immediately confessed his true name and that he was not a U.S. citizen and admitted that the passport was not his. In Matter of Y-G, Int. Dec. 3219 (BIA 1994), the Board construed Section 212(a)(6)(C)(i) of the Act, and held, specifically, that where an individual provides his true name promptly to the immigration inspectors that he is not inadmissible under Section 212(a)(6)(C)(i). The factual background in the interim decision cited above is undeniably similar to that of the background provided by the applicant about what happened when he arrived at the United States port of entry at Miami. Therefore, the Court has relied upon the Board's construction of 212(a)(6)(C)(i) in determining that Section 212(a)(6)(C)(i) charge cannot be sustained in the instant case.

On January 26, 1995, the Service District Counsel states that "the decision of the Immigration Judge correctly states the facts and the law of the case, and the Immigration and Naturalization Service concurs in the decision of the Immigration Judge."

Based on the findings of the immigration judge and the concurrence of the district counsel, the director's finding that the petitioner

has given false testimony for the purpose of obtaining immigration benefits, in this case, does not satisfy the grounds required for a finding of a lack of good moral character pursuant to section 101(f) of the Act. The petitioner, however, failed to submit evidence to corroborate his claim that he had been paying child support and that he had not failed to provide support for his children. Nor did the petitioner submit a police clearance or a state-issued criminal background check for each locality or state in the United States in which he has resided for six or more months during the three-year period immediately preceding the filing of the petition.

Accordingly, it is concluded that the petitioner has failed to establish that he is a person of good moral character and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

The director, in his decision, noted that as of the date of his notice, the petitioner had not submitted a statement or documentation to establish the current status of his marriage to Ms. [REDACTED]. He also noted that the documentation submitted by the petitioner indicates that he had a child with [REDACTED] two years after his marriage to [REDACTED] and the bona fides of his marriage to Ms. [REDACTED] may need to be investigated.

The petitioner, on appeal, did not address this concern of the director, nor did he submit documentation as had been requested.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.